CROWELL & MORING LLP
1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2595
(202) 624-2500
FACSIMILE (202) 628-5116

DOCKET FILE COPY ORIGINAL

043:smd
01215.010

ROBERT M. HALPERIN
(202) 624-2543
rhalperin@cromor.com

SUITE 1200
2010 MAIN STREET
IRVINE, CALIFORNIA 92614-7217
(949) 263-8400
FACSIMILE (949) 263-8414

180 FLEET STREET
LONDON EC4A 2HD
44-171-413-0011
FACSIMILE 44-171-413-0333

October 29, 1999

BY HAND

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: CC Docket No. 96-262, CC Docket No. 94-1, CCB/CPD File No. 98-63, and CC Docket No. 98-157

Dear Ms. Salas:

Transmitted herewith on behalf of the State of Alaska are an original and ten (10) copies of the "Comments of the State of Alaska" for filing in the above-referenced dockets. (This provides the Commission an original plus four copies for one docket and two additional copies for the other three dockets.)

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

Robert M. Halperin

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Access Charge Reform	)	CC Docket No. 96-262
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	CCB/CPD File No. 98-63
Petition of U S West Communications for Forbearance from Regulation as a Dominant Carrier in Phoenix, Arizona MSA	)	CC Docket No. 98-157

COMMENTS OF THE STATE OF ALASKA

Introduction

The State of Alaska wishes to address two issues raised in the Commission's Further Notice of Proposed Rulemaking:[1] (1) the impact on geographic rate averaging and rate integration of the proposal to permit geographic deaveraging of additional access charge elements;[2] and (2) whether interexchange carriers ("IXCs") may charge different rates to end users within the same geographic area depending on the level of access charges levied by the end-user's local exchange carrier.

---

1 *Fifth Report and Order and Further Notice of Proposed Rulemaking,* FCC 99-209 (released August 27, 1999) (*"Further Notice"*).

2 This issue is also raised by the proposal of the Coalition for Affordable Local and Long Distance Services ("CALLS"), on which the Commission is seeking comment through a

(continued...)

With respect to both of these issues, the State believes that the Commission should not take actions which would undercut the statutory mandate for geographic rate averaging and rate integration of interexchange communications. The goals of access charge reform and competitive local exchange markets are not inconsistent with the Congressional mandate for geographically averaged and integrated rates for interexchange services. The Commission should not let IXCs vary from charging geographically averaged and integrated rates even if additional access charges are deaveraged. In addition, the Commission should not permit IXCs to deviate from charging averaged and integrated rates – within the same or across different geographic areas – based on the level of access charges they pay.

Deaveraged Access Charges

In proposing to permit incumbent local exchange carriers ("ILECs") to deaverage common line access elements, the Commission noted that such rate deaveraging "may increase pressure on IXCs to deaverage interstate interexchange service rates in a manner that conflicts with section 254(g) of the [Communications] Act, which requires IXCs to charge subscribers in rural and high cost areas rates no higher than rates charged to subscribers in urban areas and to charge subscribers in each state rates no higher than rates charged in any other state."[3]

The State offers no opinion as to whether the Commission should permit or require LECs to deaverage additional access charge elements. Any such deaveraging should not, however, be allowed to permit providers of interexchange services to deviate from the statutory requirements to offer their services at geographically averaged and integrated rates.

(...continued)

separate notice. *Notice of Proposed Rulemaking*, CC Dockets No. 96-262, 94-1, 99-249, and 96-45, FCC 99-235 released September 15, 1999).

3 *Further Notice* at ¶ 191, n.493.

The State does not believe that further deaveraging of access charges needs to lead to geographically deaveraged or non-integrated rates. Access charges now are not uniform within a state or between states. Different ILECs operating in a given state assess different access charges; multistate ILECs generally charge different access charges in each of the states they serve. Nonetheless, geographic rate averaging and rate integration are required and have not been difficult for IXCs to achieve.

Congress passed Section 254(g) to "ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers."[4] It is plainly inconsistent with both the language of Section 254(g)[5] and Congressional intent to permit IXCs to charge subscribers residing in rural and high-cost areas higher rates, which would be the case if they were permitted to pass geographically deaveraged access charges through to each individual subscriber.

Geographic rate averaging and rate integration for interexchange service offerings to end-users are not inconsistent with geographic variations in access charges. As the Commission itself stated in adopting its geographic rate averaging rules, "We believe that Congress was fully aware of geographic differences in access charges when it adopted Section 254(g), and intended

---

4 H. R. Rep. 104-458, 104th Cong. 2d Sess. at 132 (1996).

5 "Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State." 47 U.S.C. § 254(g).

us to require geographic rate averaging even under these conditions."[6] Section 254(g) is written in terms of geographic averaging (and integration) of rates charged to *subscribers*, not rates charged to other telecommunications carriers.[7] Thus, continuing or even increased variation in access charges is not a legally sufficient basis to permit IXCs to deviate from the statutorily mandated geographic rate averaging and rate integration requirements. In this regard, access costs are no different than other business costs interexchange carriers incur.[8]

Specific issues are raised by any possible deaveraging of the subscriber line charge ("SLC") and primary interexchange carrier charge ("PICC"). The PICC is an access charge levied on IXCs by LECs. To the extent IXCs seek to recoup the PICC through a separate line item charge on their end-users' bills, that charge becomes one by providers of interexchange services and is subject to the statutory requirement for geographic rate averaging and rate integration in Section 254(g). Although the SLC is an access charge assessed directly by LECs on end-users, and thus possibly may not be a charge subject to Section 254(g), it is clearly subject to Section 254(b)(3), which provides that "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications services and information services, including interexchange services and advanced telecommunications and information services, . . . at rates that are

---

6 *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order*, 11 FCC Rcd 9564, 9583 ¶ 41 (1996).

7 *See Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, AAD 94-119, DA 97-320 ¶ 43 (Com. Car. Bur., Feb. 10, 1997) (access-like costs need not be geographically averaged; they are business costs incurred by interexchange carriers which, in addition to other costs, are to be recovered from subscribers through averaged rates).

8 *Id.*

reasonably comparable to rates charged for similar services in urban areas."[9] This provision clearly limits the extent to which access costs to end-users in rural and high-cost areas can be higher than those charged to consumers in urban areas.

The Commission should not permit deaveraging of any access charge to be inconsistent with the requirements of either Section 254(b)(3) or Section 254(g). The Congressionally mandated policies of geographic rate averaging and rate integration for interexchange services are critical to assuring that all Americans, including those living in high-cost and remote areas, are charged rates for interexchange services that are nondiscriminatory and reflect the increased competition in telecommunications markets in other areas of the United States.[10]

Ability Of IXCs To Charge Different Rates In Same Area

Competitive local exchange carriers ("CLECs") may assess access charges that are higher than the access charges levied by ILECs. The marketplace does not necessarily discipline the access charges of CLECs because the decision concerning which carrier to purchase access services from is generally made by the consumer originating the interexchange call or the consumer on the terminating end of that call, and not by the IXC which pays those access charges. Such "third-party payor" arrangements are not unusual (they arise, for example, in numerous government-financed health care programs), and often require some governmental oversight of the prices charged. The Commission, however, has concluded that CLECs are non-dominant carriers, and it does not regulate their rates for access services.

---

9 47 U.S.C. § 254(b)(3).

10 *See, e.g.*, Reply Comments of the State of Alaska, CC Docket No. 96-262, February 14, 1997; Reply Comments of the State of Alaska, CC Docket No. 96-61, May 3, 1996; Comments of the State of Alaska, CC Docket No. 96-61, April 19, 1996.

In paragraphs 242-45 of the *Further Notice*, the Commission raises numerous questions that arise from the desire of IXCs to avoid paying the higher access charges levied by some CLECs. The Commission first inquires whether IXCs may decline to purchase access services from CLECs. A consequence of permitting IXCs not to purchase access services, however, may be to interfere with the ability of end-users to originate or receive interexchange calls.

As the Commission recognizes in its questions, Section 254 of the Communications Act requires that all consumers have the ability to access interexchange communications.[11] Permitting IXCs not to purchase access services from a given LEC (CLEC or ILEC) would mean that the customers of that LEC would not be able to access interexchange services, including advanced telecommunications and information services. Access to these services for all Americans has been an increasing priority for this Commission.

As a fundamental matter, there is no reason why IXCs should be permitted not to purchase access services from ILECs. Interstate access charges for ILECs are regulated by the Commission,[12] and the rates that pass regulatory scrutiny are presumably just and reasonable. If an IXC is permitted not to purchase access services from the ILEC, entire communities could be left without access to interexchange services. This result is particularly likely in rural and high-cost areas where there may not be alternative suppliers of local exchange services.

Once that fundamental point is recognized, it would be inconsistent with the Commission's competition policy for the Commission to hold that IXCs must purchase access

---

11 "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services . . . ." 47 U.S.C. § 254(b)(3).

12 *See Further Notice* at ¶ 243.

services from ILECs, but not from CLECs. Any such holding would discourage the development of local exchange and exchange access competition. Consumers would be reluctant to switch from their ILEC to a CLEC if they learn that their IXC may later decide not to purchase access service from the CLEC, and thereby interfere with their ability to originate or receive interexchange communications.[13]

Moreover, as the *Further Notice* recognizes, the impact of permitting IXCs not to purchase access services is felt not only by the customers of the LEC which the IXC wishes not to purchase access services from, but by all those who wish to communicate with those customers. Interexchange telecommunications would not be terminated if the IXC refused to purchase terminating access from the LEC serving the called party.

The business incentives for IXCs not to purchase access services from particular (or even all) LECs will grow as the IXCs increasingly become local service providers and LECs increasingly offer long distance services. In Anchorage, for example, the two leading CLECs are (or are owned by) IXCs. An IXC will have the incentive to discriminate against the customers of current LECs to encourage those customers to obtain their local service from the IXC's affiliated local exchange carrier.

A requirement that IXCs purchase access services from all LECs means that IXCs need to be protected from CLECs who would charge access rates that are not just and reasonable. Because the end-user does not pay these access charges, the marketplace cannot be counted on to provide this protection. The State believes that, at least for the foreseeable future, it is the

---

[13] Although a consumer could originate interexchange communications by dialing a seven-digit access code, the loss of the ability to receive interexchange communications is not so easily cured.

obligation of state and federal regulators to oversee the intrastate and interstate access charges of all LECs (ILEC and CLEC alike).[14]

The Commission suggests that there is an alternative to regulatory oversight of access charges. It suggests that if a CLEC's access charges are higher than those charged by the competing ILEC, the IXC may pass those higher rates along to end-users by charging the CLEC's customers more for the interexchange services the IXC provides. The Commission recognizes that Section 254(g) of the Communications Act requires IXCs to charge customers in *different geographic areas* the same rates, but it asks whether Section 254(g) permits IXCs to charge its customers in the *same geographic area* different rates.

The State does not believe that this alternative is legally or practically possible. If an IXC assesses higher charges on the customers of a CLEC operating in Anchorage or Juneau (or New York City or Albany), then those customers are being charged more for interexchange services than the IXC charges to other customers located in other States. This result violates the plain language of the statute, which requires that "a provider of interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State."[15]

It is no answer to say that IXCs should be permitted to decline to purchase access services from CLECs as long as the IXC offers geographically averaged and integrated interexchange service rates to the customers of the ILEC. Such a policy allows IXCs to interfere

---

14 This regulatory oversight could take several forms and need not be intrusive. It could conceivably merely require the Commission (or state regulatory agencies) to adjudicate complaints that CLEC interstate (or intrastate) access charges are not just and reasonable.

15 47 U.S.C. § 254(g).

with the ability of consumers to originate and receive interexchange communications, and permits IXCs to interfere with consumers' selection of a local exchange service provider.

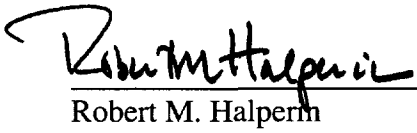
The State appreciates – and shares – the Commission's desire to avoid regulation to the greatest extent possible. There are some circumstances, however, in which regulatory oversight of some form cannot be avoided. The problem here arises largely from the fact that end-users choose their local exchange provider, but IXCs are then required to pay the access charges assessed by that provider. This "third-party payor" situation is not unique, however, and these arrangements often require some form of regulatory oversight. The Commission should not let its reluctance to engage in some minimal form of regulatory oversight interfere with its attempts to foster local exchange competition or its mandate to enforce geographic rate averaging and rate integration.

Conclusion

The Commission has long recognized that differences in the level of access charges assessed by local exchange carriers do not justify geographically deaveraged long distance rates. Congress has required that interexchange service rates be geographically averaged and integrated so that the rates Americans pay for those services are the same, regardless of where they live. The goals of access charge reform and competitive local exchange markets are not inconsistent with the Congressional mandate for geographically averaged and integrated rates for interexchange services. In furthering these goals, the Commission should not weaken its commitment to faithful implementation of that statutory mandate.

Respectfully submitted,

THE STATE OF ALASKA



Robert M. Halperin
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202/624-2543

Attorneys for the State of Alaska

Of Counsel:

John W. Katz, Esquire
Special Counsel to the Governor
Director, State-Federal Relations
Office of the State of Alaska
Suite 336
444 North Capitol Street, N.W.
Washington, D.C. 20001

October 29, 1999